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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DEC 26 2006

at 3 o'clock and 40 min. PM
SUE BEITIA, CLERK

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED PUBLIC WORKERS,)	CIVIL NO. CV03-00598 DAE LEK
AFSCME, LOCAL 646, AFL-CIO,)	
MUTUAL AID FUND TRUST,)	PLAINTIFF'S PRETRIAL
)	STATEMENT; CERTIFICATE OF
Plaintiffs,)	SERVICE
)	
vs.)	<u>PRETRIAL CONFERENCE:</u>
)	DATE: January 2, 2007
GARY RODRIGUES,)	TIME: 9:00 a.m.
)	JUDGE: Leslie E. Kobayashi
Defendant.)	
)	TRIAL DATE: February 13, 2007

PLAINTIFF'S PRETRIAL STATEMENT

A. Party.

Plaintiff UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, MUTUAL AID FUND TRUST ("Mutual Aid Fund") respectfully submits this

Pretrial Statement pursuant to Local Rule 16.6.

B. Jurisdiction and Venue.

Jurisdiction is pursuant to the Employee Retirement Income Security Act (“ERISA”) 29 U.S.C. § 1001 et seq. and 28 U.S.C. § 1131. Venue is proper because the Mutual Aid Fund is administered in Hawaii, the breaches of fiduciary duty took place in Hawaii, and Defendant Gary Rodrigues (“Rodrigues”) resides in Hawaii.

C. Substance of Action.

The Mutual Aid Fund is an employee welfare benefit fund under ERISA. It is a voluntary contribution plan that provides hospitalization benefits for participating employees and their dependents. Contributions to the Mutual Aid Fund are made by employees represented by the United Public Workers, AFSCME, LOCAL 646, AFL-CIO (“UPW”).

While Rodrigues was the Plan Administrator of the Mutual Aid Fund, he breached his fiduciary duties by imprudently and without adequate due diligence causing the Mutual Aid Fund to make \$1.1 million in unsecured loans to a risky, small, under-capitalized, start-up company in Florida called Best Rescue Systems, Inc. Best Rescue wanted to manufacture high-rise building fire rescue systems. Rodrigues arranged the loans through an investment advisor, Albert Hewitt, who

received a finder's fee of approximately \$55,000 in connection with the loans.

Best Rescue failed to repay the loans and the Mutual Aid Fund lost \$1.1 million plus interest.

D. Undisputed Facts.

It is anticipated that the following facts are undisputed:

1. The Mutual Aid Fund loaned \$1.1 million to Best Rescue, a start-up company in Florida.
2. Best Rescue defaulted and did not repay the loans.
3. Rodrigues was the Plan Administrator when the loans were made.
4. Hewitt received payments in connection with the loans.

E. Disputed Factual Issues.

It is anticipated that the following facts are disputed:

1. The Best Rescue loans were imprudent.
2. Rodrigues knew that Hewitt received payments in connection with the Best Rescue loans.

F. Relief Prayed.

\$1.1 million plus interest, fees and costs, less any reimbursements received.

G. Points of Law.

1. Pursuant to ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), Rodrigues may be held liable for breaching his fiduciary duty by failing to prudently invest Mutual Aid Fund monies.

2. Pursuant to ERISA § 405, 29 U.S.C. § 105, Rodrigues may be held liable for assisting Hewitt's breaches of fiduciary duty by failing to prudently invest Mutual Aid Fund monies.

3. Pursuant to § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), Rodrigues may be held liable for facilitating an improper prohibited transfer to Hewitt.

H. Previous Motions.

The Court previously denied Rodrigues' motion to dismiss.

I. Witnesses To Be Called.

The following witnesses may be called to testify about the Best Rescue loans:

1. Gary Rodrigues [2 hours]
c/o Eric Seitz, Esq.
2. Albert Hewitt [1 hour]
1539 Common Way Road
Orlando, Florida 32814-6419
3. George Yasumoto [1 hour]
c/o Charles Price, Esq.
4. Dayton Nakanelua [1 hour]
c/o Charles Price, Esq.
5. Jeanne Endo [1 hour]
c/o Charles Price, Esq.
6. Larry Weinberg, Esq. [1 hour]
1101 17th Street, N.W.
Washington, D.C. 20036
7. Robert Kirkland [1 hour]
Current address unknown

J. Exhibits, Schedules and Summaries.

(a) Promissory Notes dated as follows: November 24, 1998 (\$250,000), February 5, 1999 (\$200,000), April 26, 1999 (\$150,000), June 30, 1999 (\$250,000), August 24, 1999 (\$150,000), and November 22, 1999 (\$100,000); [Rodrigues, Hewitt, or Endo]

(b) Documents showing payments toward loans; [Endo or Nakanelua]

(c) Documents showing Mutual Fund's assets and investment allocation; [Endo or Nakanelua]

(d) Documents showing Hewitt's investment advisor status; [Rodrigues, Hewitt, or Endo]

(e) Documents relating to Hewitt's finder's fees. [Rodrigues, Hewitt, or Endo]

(f) Memorandum of Plea Agreement, filed August 30, 2005, USA v. Hewitt, CR. No. 03-00552 SOM. [Hewitt]

K. Further Discovery or Motions.

The deposition of Albert Hewitt remains to be taken. No motions are pending.

L. Stipulations.

None.

M. Amendments, Dismissals.

None.

N. Settlement Discussions.

The parties are presumably far apart. Further participation in settlement or negotiations is unlikely to be productive.

O. Agreed Statement.

Proceeding based upon a whole or partial agreed statement of facts is not feasible or desired.

P. Bifurcation, Separate Trial of Issues.

No bifurcation or separate trial of specific issues is feasible or desired at this time.

Q. Reference to Master or Magistrate Judge.

Reference to a magistrate judge for trial is not feasible or desired at this time.

R. Appointment or Limitation of Experts.

Appointment of an expert is not feasible or desired. No expert witnesses have been identified.

S. Trial.

Non-jury trial is currently scheduled for February 13, 2007 before Judge David Ezra.

T. Estimate of Trial Time.

The Mutual Aid Fund anticipates needing 1-2 days to present its case.

U. Claims of Privilege or Work Product.

No matters are omitted from above based upon claims of privilege or

work product.

V. Miscellaneous.

Discovery is ongoing. The Mutual Aid Fund reserves the right to supplement this Pretrial Statement.

DATED: Honolulu, Hawaii, December 26, 2006.

A handwritten signature in cursive script, appearing to read "Charles Price", written over a horizontal line.

JAMES E. T. KOSHIBA
CHARLES A. PRICE
Attorneys for Plaintiffs

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AFSCME, LOCAL 646, AFL-CIO,)	
MUTUAL AID FUND TRUST,)	CERTIFICATE OF SERVICE
)	
Plaintiff,)	
vs.)	
)	
GARY RODRIGUES,)	
)	
Defendant.)	
_____)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date noted below, a copy of the foregoing document was duly served upon the following by U.S. Mail, postage prepaid, addressed as follows:

ERIC A. SEITZ, ESQ.
820 Mililani Street, Suite 714
Honolulu, Hawaii 96813

Attorney for Defendant
GARY RODRIGUES

DATED: Honolulu, Hawaii, December 26, 2006.



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